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U.S. DISTRICT COURT
DISTRICT OF WYOMING
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STEPHAN HARRIS, CLERK
CHEYENNE

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
WYOMING.

Docket Number 19-cv-159-S

JANA GARCIA,

Plaintiff,

VS.

STATE OF WYOMING, Department
of Health and Social Services,

Defendant.

COMPLAINT

Comes now the plaintiff and for her complaint alleges:

Jurisdiction and Venue

1. This is a civil action arising under the laws of the United States and is brought pursuant to the Rehabilitation Act of 1973, 29 U.S.C. §793 and 29 U.S.C. 794 the Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. §§12101 et. Seq.)the Civil Rights Act of 1964 codified at 42 U.S.C.2000e et seq. This court has jurisdiction of the claims pursuant to 28 U.S.C. §1331 and 1343.

2. Venue in the United States District Court for the District of Wyoming is proper under 28 U.S.C. 1391 (b)(2) and 42 U.S.C. §2000e.

3. Prior to filing this action the plaintiff timely submitted to the Wyoming

Fair Employment Program a Charge of Discrimination setting forth facts contained herein.

4. This matter is timely initiated within 90 days of May 7th, 2019, the date that the EEOC's Notice of Right-to-Sue was mailed to the plaintiff.

Parties.

4. Plaintiff is a citizen of the United States and at all times herein was a resident of the State of Wyoming constituting the Federal District of Wyoming.

5. The defendant is the State of Wyoming acting within its authority as the Wyoming Department of Health.

Facts

6. The plaintiff is a qualified individual with a disability as such is described in the Americans with Disability Act, to wit, an individual who, with or without reasonable accommodation, can perform the essential functions of the employment position that such individual holds or desires, to wit, post traumatic stress and anxiety.

7. The plaintiff also is Hispanic and practices the Jewish faith.

8. The plaintiff, while an employee of the defendant State of Wyoming as a public health nurse in Converse County was subjected to harassing conduct by co-employees based upon her race, religion, and disability, to wit:

- a. In October 2017 Meliessa Ohnstad, Regional manager, Kristal Skiles, Nurse manager, said she was not normal compared to her co-workers.
- b. In October 2017 Ms Skiles shadowed me that caused me to feel uncomfortable and have anxiety attacks.
- c. Ms. Ohnstad told me I was unstable .
- d. My co-workers would bring pork to the Tuesday meetings knowing that I was unable to eat pork because of my religion.

- e. I was expected to participate in Christmas exchanges and Easter Egg hunts.
- f. I was excluded from the interview process of Ms. Skiles.

9. The harassment was pervasive and affected a term, condition or privilege of employment which altered the employment conditions and created an abusive work environment.

10. The plaintiff complained about the discriminatory conduct of her co-workers to her employer but the employer did nothing to stop the harassing, discriminatory conduct.

11. The plaintiff notified the defendant of her mental and emotional disability of anxiety disorder and post traumatic stress disorder and requested accommodation.

12. Despite her satisfactory performance, was plaintiff was disciplined by the defendant when on October 10, 2017, Melissa Ohnstad told the plaintiff that she was being taken off of patient care and was going to receive a letter of expectation.

13. On October 13, 2017, plaintiff engaged in protected opposition to discrimination when she sent a text to Ms. Ohnstad that said that she felt discriminated against and she was going to contact an attorney.

14. Subsequent to her notification of her opposition to discrimination the plaintiff suffered adverse employment action against her by the employer as follows;

- a. On October 19, 2017, she was placed on paid administrative leave.
- b. In November 2017 she was required to undergo a fitness for duty evaluation during which the employer did not provide to the evaluator relevant information concerning the work performance of the plaintiff, but the employer's evaluator was not provided with adequate information to determine her

fitness for duty including, but not limited to, her job performance evaluations, her counseling records,, patient charts or reports, written statements by witnesses to harassment, nor any other information about the harassment of the plaintiff by her coworkers regarding her race or religion.

- c. On January 5, 2018, the employer issued to the plaintiff a Letter of Intent from the employer stating that it intended to terminate my employment.
- d. On January 5, 2018, the employer filed an administrative complaint with the Wyoming Board of Nursing.
- e. She was then discharged on pre-textual grounds based upon supposed work performance.

15. As a direct and proximate result of the defendant's acts, plaintiff has suffered great economic harm and other consequential damages.

FIRST CLAIM FOR RELIEF

16. Because of the willful acts of the defendant, and as a proximate cause of those actions, plaintiff has been and continues to be denied her right to equal employment opportunity in violation of the Civil rights act of 1964, 42 U.S.C 2000e.

17. As a result of the acts of the defendant set forth herein the plaintiff has suffered damages in loss of income past and future and consequential damages as shall be proven.

SECOND CLAIM FOR RELIEF.

18. Because of the willful acts of the defendant and as a proximate cause of those actions, plaintiff has been and continues to be denied her rights under the Americans with Disabilities Act, 42 U.S.C. §§12101 et. Seq.

19. The acts by the defendants have discriminated against Plaintiff as a qualified individual with a disability by refusing reasonable accommodation to the

known limitations of the plaintiff.

20. As a result of the actions of the defendant Plaintiff has been caused to suffer such damages as shall be proven.

21. Plaintiff alleges that pursuant to 42 U.S.C. §12117 (a) she is entitled to reinstatement, back-pay, front pay and attorney's fees for the prosecution of this action and for her damages and costs.

THIRD CLAIM FOR RELIEF

22. 13. The acts of the defendants constitute retaliation for exercising rights under the law by opposing discrimination as such is understood under the *Civil Rights Act of 1964*, (42 U.S.C. §2000e-3 (a)).

~~14~~ As a result of the retaliatory actions of the defendants jointly and severally, Plaintiff was caused to suffer damages as shall be proven.

ATTORNEY FEES.

Pursuant to the Civil Rights Attorney Fees Awards Act, 42 U.S.C. §1988 plaintiff is entitled to be awarded such attorney fees as are reasonable.

JURY DEMAND

Plaintiff demands that this matter be tried by a jury of six persons.

Wherefore the defendant demands that judgment be entered against the defendant and in favor of the plaintiff in this matter.

Dated this August 2, 2019.

By: s/


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